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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION ONE

RYAN RIVERA,

Plaintiff and Appellant,

v.

RUTH WILSON et al.,

Defendants and Respondents.

A122729

(Alameda County
Super. Ct. No. HG07362341)

MEMORANDUM OPINION

Plaintiff Ryan Rivera, in pro. per., appeals from an order dismissing his first amended complaint after the trial court sustained the demurrer of defendants Ruth Wilson et al., without leave to amend. Plaintiff contends the court should have allowed him leave to further amend his complaint. We disagree because all applicable statutes of limitations expired prior to the filing of the complaint.

Rose Rivera died on August 28, 2002 at the age of 86. She had executed a pour-over will and revocable living trust on November 24, 1992, that distributed her estate in relatively equal shares to her four grandchildren—who do not include plaintiff.

The trust granted a power of appointment to defendant Ruth Wilson. On October 26, 2004, Wilson exercised this power of appointment in favor of family members other than plaintiff. Plaintiff was served with notice of the exercise of the power of appointment on November 17, 2004.

On December 20, 2007—three years and one month later—plaintiff filed a complaint alleging, in essence, breach of a contractual promise that he was to share in Rose Rivera’s estate. Defendants demurred. The trial court sustained the demurrer with leave to amend. Plaintiff filed his first amended complaint and defendants again demurred. As noted, the trial court sustained the demurrer to the first amended complaint without leave to amend and dismissed the action.

Plaintiff’s complaint is barred by the statute of limitations, because every limitations period that could possibly apply had expired by the time plaintiff filed his complaint.

A limitations period of one year governs an action to enforce a claim of distribution based on a promise by the decedent (Code Civ. Proc., § 366.3, subd. (a)).¹

A limitations period of two years governs an action on an oral contract or rescission thereof (§ 339, subds. (1) & (3)), and an action for interference with contract or economic relations (§ 339, subd. (1)).

A limitations period of three years governs an action for fraud (§ 338, subd. (d)).

The judgment of dismissal is affirmed.

Marchiano, P.J.

We concur:

Margulies, J.

Graham, J.*

¹ Subsequent statutory references are to the Code of Civil Procedure.

* Retired judge of the Superior Court of Marin County assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.